In the High Court of Judicature for Rajasthan

Jaipur Bench

**

Cr. Misc. Petition No.720/2000

Sajjan Singh Jain & (7) Ors. ***Versus*** State

Date of Order ::: 05/10/07

Hon'ble Mr. Justice Ajay Rastogi

Mr. S.R.Bajwa)
Mr. JK Singhi) for petitioners (accused)
Mr. Arun Sharma, Public Prosecutor for State.

Instant Misc. Petition U/s 482 CrPC is directed against taking cognizance of offence U/S 7/16 of Prevention of Food Adulteration Act, 1954 (“**the Act**”) vide order dt.18/07/98 and summoning petitioners (accused Nos.2 to 9) in Cr. Complaint No.589/98 pending before Addl. Chief Judl. Mag. Beawar (Ajmer) vide order dt.29/07/98.

Petitioners are Office bearers of Shree Cement Employees Saving & Credit Society Ltd duly registered under Co-operative Societies Act (“**Society**”) which is running a general grocery Store at Shree Cement Factory campus, Beawar, where Ramniwas (accused No.1) was salesman duly appointed by the Society.

On 31/07/96 at about 4 O' Clock, while Ramniwas (accused No.1) was sitting at the

grocery store of the Society, Food Inspector visited there and after introduction, inspected the shop and took sample of groundnut edible oil measuring 375 gms by paying price of Rs.18.40p, to accused No.1 (Ramniwas) and divided it in three equal parts and poured in three bottles which were sealed after wrapping slip paper No.A-511 thereon in accordance with Rules – one sample whereof was sent for analysis to Public Analyst, Ajmer, who in his report dt.16/08/96 opined that sample is adulterated as it did not conform to the prescribed standards and as per section 2(ia)(a) of the Act.

After obtaining written sanction from competent authority vide letter dt.26/06/98, Food Inspector filed complaint on 18/07/98 for prosecution against petitioners as well as accused No.1 (Ramniwas, Salesman) for offence (supra), which was registered and the learned Magistrate took cognizance of offences (supra) and issued process against all accused including petitioners vide order dt.29/07/98.

In the meantime, copy of Public Analyst report dt.16/08/96 alongwith notice dt.22/07/98 issued by Food Inspector, was sent to each of accused including petitioners through registered

letter vide postal receipts dt.23/08/98, against which Ramniwas (accused No.1) through counsel moved an application dt.01/08/98 U/s 13(2) of the Act before Magistrate and they controverted analyst report dt.16/08/96 and prayed for re-analysis of referee sample through Central Food Laboratory Mysore – on which learned Magistrate vide order dt.05/10/98 allowed the application and ordered to send referee sample for re-analysis to the Central Food Laboratory, Mysore at requisite fee of Rs.200/-, demand draft whereof was submitted and referee sample was sent to the Central Laboratory, which opined in report dt.08/08/2000 ad infra:

> "the sample does not conform to the standards laid down for groundnut oil under the PFA Act & Rules thereof, in that (a) bellier test (turbidity temperature) value falls below the minimum requirement of 39^{o}C."

Counsel for petitioners submits that without taking cognizance against petitioners, straight away only process has been issued as is evident from order dt.29/07/98 while it was

expected of learned Magistrate that after taking note of complaint and material accompanying thereto, if he satisfies about suspicion of commission of criminal offence, he would be justified in taking cognizance and issuing summons of petitioner but in instant case, procedure adopted by learned Magistrate is not inconsonance with provisions contained in S.190, CrPC inasmuch as there was no application of mind before issuing process against petitioners and straight way, Magistrate has summoned the petitioners by non-bailable warrants which is in clear violation of S.190, CrPC.

Counsel further submits that shop from where Food Inspector took sample of edible groundnut oil, is run by Co-operative society – of which petitioners are its office-bearers and Ramniwas (accused No.1) was appointed as salesman at the shop, from whom inspector purchased the sample, and he alone was responsible for conduct of business of the society and not the petitioners. Counsel further submits that there is no whisper in the complaint against petitioners as to how and in what manner they were in-charge of or responsible for conduct of

business of the Society at the time of commission of alleged offence and in absence of necessary ingredient as contemplated in S.17 of the Act being disclosed in complaint, itself, vague reference of responsibility is not a sufficient compliance of mandatory requirement U/s 17 of the Act; as such, very cognizance taken of offences (supra) against petitioners vide order impugned is not legally sustainable. In support, Counsel placed reliance upon decision of Apex Court in **Municipal Corpn Delhi Vs. Ram K.Rohtagi (AIR 1983 SC 67); State of Haryana Vs. Brijlal Mittal (AIR 1998 SC 2327)** and of this Court **in Bharat Insecticides Ltd Vs. State of Rajasthan (1996 (1) RLR 349) and M/s Cadila Health Care Ltd Vs. State (DB) (2007(1) RLR 389).**

However, Counsel submits that merely petitioners being office-bearers of Society will not hold them vicariously liable for offences alleged, and even otherwise nothing has been disclosed in complaint, itself except in para 4 where a vague averment has been made that salesman has informed that they are running the shop under supervision of Society's office-bearers, which cannot be considered to be sufficient to draw adverse presumption for

holding them vicariously liable; and in such circumstances, criminal prosecution against petitioners is nothing but a clear abuse of process of law and deserves to be set aside.

Public Prosecutor while supporting the order impugned, submits that material on record clearly constitute commission of offence alleged against petitioners U/s 7/16 of the Act and that apart, all these objections raised herein can be agitated in course of trial and since complaint discloses commission of offence, summons have rightly been issued to the offenders and during trial they will get opportunity to satisfy the Court about act of commission of offences alleged against them; and as such no error has been committed while taking cognizance impugned and the petition deserves to be dismissed.

This Court has considered contentions of Counsel for both the parties and with their assistance examined material on record. It is true that proceedings against accused at initial stage is ordinarily not to be interfered with but if complaint on its very face value lacks of material particulars for commission of offence under the Act, the Court should not be hesitant to invoke powers U/s 482, CrPC. In **Sharda Prasad**

Sinha Vs. State of Bihar (1977(1) SCC 505), Apex Court observed ad infra :

> "It is now settled law that where the allegations set out in the complaint or the charge sheet do not constitute any offence, it is competent to the High Court exercising its inherent jurisdiction under section 482 of the Code of Criminal Procedure to quash the order passed by the magistrate taking cognizance of the offence."

Word "cognizance" is not defined in Code of Criminal Procedure. Conditions to initiate proceedings are stipulated in S.190, CrPC, in which learned Magistrate may order to take cognizance of any offence -

> (a) upon receiving a complaint of facts which constitute such offence;
> (b) upon a police report of such facts;
> (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

However, as per S.190(1)(a) CrPC, if complaint of facts constitutes an offence alleged therein, Magistrate is competent to take cognizance whereof. A perusal of orders dt.18/07/98 & 29/07/98 shows that Magistrate took note of the fact that complainant has filed complaint along

with accompanying documents against accused named therein for offence U/s 7/16 of the PFA Act and thereafter vide order dt.29/07/98 issued process for summoning the accused by bailable warrants. Merely because learned Magistrate did not mention of taking cognizance, it cannot be said that he has not taken cognizance, while process has been issued.

As per complaint, petitioners are office bearers of the Society – at whose shop Ramniwas (accused no.1) was salesman on the day when food inspector visited & took sample. Complaint alongwith documents appended thereto filed by food inspector gives complete description of groundnut oil being purchased by food inspector who was duly authorised to take sample whereof, which was divided into three equal parts – one of which was sent for analysis to the public analyst who found it to be adulterated and its analysis report was sent to the accused named in the complaint who are alleged to have controverted the report, as well and later on applied for U/s 13(2) of PFA Act, on which referee sample was sent for re-analysis to the Central Food Laboratory, Mysore which has also opined that the sample failed to conform its standards as is

evident from report, quoted (supra) and procedure as provided under the Act has been complied with – reference whereof has been made in complaint itself and documents appended thereto – that prima facie constitutes commission of offence U/s 7/16 of the Act. Hence this Court does not find any substance in the contention of Counsel for petitioner that learned Magistrate has not applied its mind while passing order impugned.

S.17 of the Act relates to offences by Companies and as per Cl.(a) to Explanation to S.17 of the Act, “company” means any body corporate and includes a firm or other association of individuals. S.17 spells out that for commission of offences alleged against Companies, every person who was in charge of or responsible for the Company for conduct of its business, as well as the Company shall be deemed to be guilty of offence and that being so, S.17 (4) further clarifies that it has to be proved that offence has been committed with a consent or connivance which can be attributable to a neglect on the part of Director/Manager, Secretary or other person of Company, who can alone be prosecuted and punished.

In instant case, only fact referred to

in the complaint with regard to act of instant petitioners so as to show about they being either in charge of or responsible to the Firm for conduct of its business, as required by S.17(4) of the Act is reproduced from para 4 of complaint ad infra:

> **"4-** स्थानीय स्वास्थय प्राधिकारी एवं मुख्य चिकित्सा एवं स्वास्थय अधिकारी ब्यावर जिला अजमेर मुख्यालय ब्यावर ने जन विश्लेषक द्वारा प्राप्त रिपोर्ट भिजवाई जिसके अवलोकन करने पर ज्ञात हुआ कि मूगफली का तेल पी एफ ए एक्ट के निर्धारित मापदण्ड के अनुसार होना नहीं पाया जाता है इसके बाद मुल्जिम को पी एफ ए एक्ट 1954 की धारा 7 के खिलाफ वर्जीकरण पाया गया जिसकी सजा पी एफ ए एक्ट की धारा 16 में दर्ज है सेल्समेन ने अवगत कराया कि कारोबार का संचालन कार्यकारिणी की देखरेख में होता है "

For criminal liability, penal action must be strictly construed and there is no vicarious liability in criminal law unless statute takes that also within its fold. S.17 of the Act deals with offences by Companies but does not make all of its Directors/office bearers liable for commission of offence alleged against Company merely because of their holding office of Directors/office bearers or in other capacity.

As regards law on the ground urged at the bar where a corresponding provision under

Drugs & Cosmetics/Insecticides Act has come for consideration it stands settled by virtue of decision of Apex Court in **State of Haryana Vs. Brijlal Mittal (supra) Apex Court** observed :

> "It is thus seen that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company arises if at the material time he was in-charge of and was also responsible to the company for the conduct of its business. Simply because a person is a director of the company it does not necessarily mean that he fulfills both the above requirements so as to make him liable. Conversely, without being a director a person can be in-charge of and responsible to the company for the conduct of its business. From the complaint in question we, however, find that except a bald statement that the respondents were directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were in-charge of the company and also responsible to the company for the conduct of its business."

In **M/s Cadila Health Care Ltd Vs. State (supra**) this Court (DB) observed while examining scope of S.34 of the Insecticides Act ad infra: -

> **"21.** The crucial test which has been laid down by the Hon'ble Supreme Court

> on the issue of Director being 'in charge of' & 'responsible to the company for the conduct of business of the company' as required under section 34 of the Act is that the Director is concerned with the day-to-day working of the company, or in other words, for over-all control of the day-to-day business of the company or firm which excludes Directors connected with policy of the company. The Director may not be in charge of business of the company or may be in charge of business of the company but not over all in charge or may be in charge of only some part of business and further test as regards averments/allegations made in the complaint, the Supreme Court had laid down that words mentioned in the section are not the magic words but the substance of the allegations be read as a whole. ”

In view of what has been observed (supra), very complaint filed against petitioners in instant case is not sustainable in the eye of law as it completely lacks material particulars as required U/s 17 of the Act and on a perusal of entire complaint, there is no iota of allegation in the complaint which may disclose about petitioners being 'in-charge of' and 'responsible for the conduct of business of the Society for day-to

day or having over-all control over its business in order to make them vicariously liable for commission of offence and except vague statement that they are office-bearers of the Society, there is no allegation which may prima facie indicate that they were in-charge of or responsible to the Society for conduct of its business.

Only fact having come in complaint is that salesman informed that the grocery store was being run under supervision of office bearers of the Society which owned grocery shop at factory campus where from sample has been taken by food inspector. Material disclosed in instant complaint does not create any such vicarious liability qua petitioners. Hence order of Magistrate taking cognizance of offence and issuing process for summoning petitioners is of no legal significance and in such circumstances, to prosecute the petitioners in instant case will be nothing but an abuse of process of law.

Although this Court has set aside the order impugned but would like to point out that Section 319, CrPC certainly empowers the Court to take cognizance against persons not being the accused before it and try them along with other

accused already standing at trial, in case prosecution can at any stage produce evidence satisfying the Court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence, at that stage the Court can take cognizance against them and try them along with the other accused as has been observed by Apex Court in **Municipal Corp. Delhi vs. Ram Kishan Rohtagi (1983 (1) SCC 1**) ad infra:

> **"19.**In these circumstances, therefore if the prosecution can atany stage produce evidence which satisfies the court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the Court can take cognizance against them and try them along with the other accused. But, we would hasten to add that this is really an extra ordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken. More than this we would not like to say any thing further at this stage. We leave the entire matter to the discretion of the court concerned

> so that it may act according to law. We would, however, make it plain that the mere fact that the proceedings have been quashed against respondent Nos.2 to 5 will not prevent the court from exercising its discretion if it is fully satisfied that a case for taking cognizance against them has been made out on the additional evidence led before it."

Consequently, misc. petition succeeds and is hereby allowed. Further proceedings qua petitioners (accused No.2 to 9 in complaint) initiated vide order dt.18/07/98 & 29/07/98 in Cr. Complaint No.589/98 pending before Addl. Chief Judl. Mag. Beawar (Ajmer) are quashed and set aside. However, in the light of what has been observed (supra), this Court makes it clear that merely proceedings have been quashed against petitioners will not prevent the trial Court from exercising its discretion U/s 319, CrPC, if it is fully satisfied that a case for taking cognizance against them has been made out on additional evidence led before it in course of trial.

Record be sent back forthwith to the court below to proceed in accordance with law and expedite the trial.

(**Ajay Rastogi), J.**